



PUBLIC NOTICE

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**APPLICATION GRANTED FOR THE
TRANSFER OF CONTROL OF UNITE PRIVATE NETWORKS, LLC AND
UNITE PRIVATE NETWORKS-ILLINOIS, LLC TO
COX COMMUNICATIONS, INC.**

WC Docket No. 16-241

For the reasons explained below, we grant the application filed by Unite Private Networks, LLC, Unite Private Networks-Illinois, LLC (together, UPN or the UPN Companies), REP UP, L.P. (REP UP), and Cox Communications, Inc. (Cox) (collectively, Applicants),¹ pursuant to section 214 of the Communications Act of 1934, as amended, and section 63.03 of the Commission's rules, requesting authorization to transfer control of UPN from REP UP to Cox.² No commenters opposed a grant of this application.

The UPN Companies, both Delaware limited liability companies, provide domestic telecommunications services over more than 6,200 fiber route miles to 3,750 on-net buildings for customers in Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Missouri, Montana, Nebraska, New Mexico, Ohio, Oklahoma, Texas, Virginia, Washington, Wisconsin, and Wyoming.³ UPN offers telecommunications services to schools, local and state governments, carriers, data centers, hospitals, and enterprise customers in the areas it serves within those states.⁴ UPN does not offer residential services. UPN Intermediate Holdings, LLC (UPN-I) wholly owns the UPN Companies.

Cox, a Delaware corporation, and its affiliates provide domestic and international telecommunication services, broadband service, and video service in 18 states, serving more than six million customers in the residential, small and medium business, and enterprise markets.⁵ Cox has service areas in Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Iowa, Kansas,

¹ Application of Unite Private Networks, LLC and Unite Private Networks-Illinois, LLC, REP UP, L.P. and Cox Communications, Inc. for Consent to Transfer Control of Domestic Authority Pursuant to Section 214, WC Docket No. 16-241 (filed July 27, 2016) (Application). Applicants filed a supplement to the Application on August 24, 2016. See Letter from J.G. Harrington, Counsel for Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-241 (filed Aug. 24, 2016) (Supplement). On September 2, 2016, the Wireline Competition Bureau (Bureau) released a public notice accepting the application for non-streamlined processing. *Domestic Section 214 Application Filed for the Transfer of Control of Unite Private Networks, LLC and Unite Private Networks-Illinois, LLC to Cox Communications, Inc.*, Public Notice, DA 16-1008 (WCB Sept. 2, 2016).

² See 47 U.S.C. § 214; 47 CFR § 63.03.

³ Application at 4. Applicants state that UPN also provides interstate services in California to one customer with a small number of leased facilities. *Id.* at n.6

⁴ *Id.* at 4.

⁵ *Id.* at 2.

Louisiana, Massachusetts, Missouri, Nebraska, Nevada, Ohio, Oklahoma, Rhode Island, and Virginia with more than 30,000 route miles of fiber in place today.⁶

Pursuant to the terms of the membership interest and stock purchase transaction, Cox will acquire an indirect majority interest in UPN-I.⁷ Applicants state that following consummation of the proposed transaction, Cox will hold a combined 66 percent equity interest in Fiber Platform, LLC (Fiber Platform), a Delaware limited liability company, through Cox's wholly owned subsidiaries.⁸ Ridgemont Equity Partners (Ridgemont), a U.S.-based equity fund, currently controls REP UP and, post-consummation, will hold approximately a 28 percent equity interest in Fiber Platform through three of its investment funds.⁹ The remainder of the equity of Fiber Platform will be owned by members of the management of UPN, none of whom will hold a ten percent or greater equity interest.¹⁰ Fiber Platform, in turn, will own 100 percent of UPN-I.¹¹ Applicants state that UPN-I will continue to operate as a stand-alone business as a direct subsidiary of Fiber Platform, which will be governed by a Board of Managers that consists of Managers appointed by Cox, Ridgemont, and the management of UPN.¹²

Based on the record evidence, we find the transaction is unlikely to have adverse competitive effects. Although the Applicants disclosed that "UPN's service area overlaps with the Cox service area only in the Fayetteville, Arkansas; Macon/Warner Robins, Georgia; Manhattan, Barton County, and Geary County, Kansas; Omaha, Nebraska/Iowa; and Oklahoma City, Oklahoma markets,"¹³ we find that the proposed transaction is unlikely to result in Cox having sufficient market power to raise prices on consumers in those areas. The Commission and the Bureau have consistently found that, in transactions in which competitive local exchange carriers (LECs) combine to form a stronger competitor to the incumbent LEC, the transaction will enhance competition, including in locations in which the incumbent LEC would otherwise be the primary provider.¹⁴ To this end, Applicants state that the proposed

⁶ *Id.* at 2, n.2. Cox provides video service, but not telecommunications service, in North Carolina.

⁷ *Id.* at 2.

⁸ These subsidiaries are Fiber Platform Holdings, LLC, a Delaware limited liability company (which will have approximately a 34 percent interest in Fiber Platform) and Fiber Platform Blocker, Inc. (Fiber Platform Blocker), also a Delaware limited liability company (which will have approximately a 32 percent interest in Fiber Platform). *Id.*

⁹ The Applicants state that, under the proposed agreement, the interests reported may vary depending on what interests UPN management retains following the proposed transaction. Applicants state that, post-consummation, Ridgemont will maintain control over REP UP, but REP UP will hold no interest in UPN. Cox, through Fiber Platform Holdings and Fiber Platform Blocker, will have an interest of approximately 66 to 69 percent interest in UPN. Ridgemont, collectively through REP UPN, L.P., REP UPN II, L.P., and Ridgemont Equity Partners Affiliates II-B, L.P., all three of which are Delaware limited partnerships, will hold approximately a 27-30 percent equity interest in UPN post-transaction. *Id.* at 2-3.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 7, 8.

¹⁴ See *Applications Filed by Qwest Communications and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4199, para. 151 (2011) (referring to Applicants' overlapping competitive LEC operations and stating "[r]ather than harming competition, we believe that the combination of the Applicants' facilities in these markets could result in a stronger competitive LEC and enhance the merged company's ability to compete against the incumbent LEC"); *Applications Filed for the Transfer of Control of two telecom inc. to Level 3 Communications, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 12842, 12847, para. 14 (WCB/IB 2014) (finding that the combination of two competitive LECs with largely complimentary networks could be a stronger competitor to the incumbent LECs and large national providers, thereby resulting in

(continued....)

transaction will strengthen their ability to compete with the incumbent LEC in local markets and regionally. They attest that the combined entity will be able to provide customers with access to complementary and differentiated fiber networks with a broader geographic reach throughout the central United States and allow Cox to densify its fiber network throughout its existing geographic footprint and adjacent areas.¹⁵ They contend that the transaction will not only extend the reach of both entities to markets outside of their current reach to broaden the scope of their customers bases, but also fill in missing infrastructure in existing markets, thereby increasing competition to the benefit of all customers.¹⁶ After requesting that the Applicants file additional information regarding their overlapping service areas and carefully reviewing the record,¹⁷ we find that the proposed transaction poses no significant competitive harms. Rather, consistent with precedent,¹⁸ we believe that the combination of the Applicants' facilities in these markets will result in a stronger competitive LEC and enhance the merged company's ability to compete against the incumbent LEC.¹⁹

We have also reviewed Applicants' claims of benefits and find the transaction is likely to provide some benefits to business customers resulting from Cox investing in UPN's network.²⁰ Applicants state that the addition of the UPN network will increase Cox's geographic reach of fiber to serve more on-net customers.²¹ Applicants maintain that Cox and Ridgmont will provide UPN a credit facility that will be available to fund capital projects, including expanding UPN's fiber footprint within and outside its current markets.²² Applicants state that this includes providing UPN with the financial resources necessary to accelerate its strategic growth initiatives.²³ Further, Applicants maintain that Cox has strategic capabilities, including making certain Cox products and managed services available to UPN customers

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benefits for consumers); *Applications Filed for the Transfer of Control of Insight Communications Company, Inc. to Time Warner Cable Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 497, 505-06, paras. 18-19 (WCB/IB/WTB 2012) (finding that the merged competitive LECs would benefit from combined networks and expanded services, and therefore be a stronger competitor to the incumbent LEC and enhance competition); *Notice of Domestic Section 214 Granted for the Transfer of Control of EasyTel Communications Carrier Corporation to CoxCom, LLC*, Public Notice, 28 FCC Rcd 14738 (WCB 2013) (finding a transfer of control to be in the public interest in which applicants had overlapping competitive LEC operations and other competitors were in the market); *Applications Granted for the Transfer of Control of FiberNet from One Communications Corp. to NTELOS Inc.*, Public Notice, 25 FCC Rcd 16304, 16307 (WCB 2010) (finding that NTELOS's acquisition of FiberNet, a competitive LEC with overlapping service areas, would enable it to compete more effectively with incumbent LECs and other cable companies); *Application of XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, 17 FCC Rcd 19212, 19225-26, para. 30 (IB/WTB/WCB 2002) (finding that the merged competitive LECs would be a stronger competitor to the incumbent LEC in their overlap states and that the proposed transaction would therefore increase competition rather than curtail it).

¹⁵ Application at 5.

¹⁶ *Id.* at 6; Supplement at 4.

¹⁷ Supplement at 3-5 and Attach. 3 (Information Concerning Overlapping Markets) (providing numbers of buildings in overlap areas post-transaction served by fiber facilities); Application at 7, 8.

¹⁸ *See supra* n.14.

¹⁹ *See* Application at 6.

²⁰ *See Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9682, para. 102 (2013) (*Sprint/SOFTBANK Order*) (finding that new investments "likely will strengthen" the company's ability to compete and could potentially result in innovation and lower prices for all customers).

²¹ Application at 21.

²² Supplement at 4.

²³ *Id.*

and leveraging Cox customer support resources, network monitoring and operations centers, and network security elements, to improve UPN's product and service offerings.²⁴ While it is difficult to quantify these asserted benefits in terms of tangible improvements for customers, under the Commission's sliding scale approach, where potential public interest harms appear unlikely, as is the case here, we accept a lesser showing of public interest benefits.²⁵

Accordingly, based on the record before us, the proposed transaction likely will result in certain public interest benefits that outweigh any potential competitive harm, and we find that grant of the Application will serve the public interest, convenience, and necessity.²⁶

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214 and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the Bureau, under delegated authority, hereby approves the Application listed herein.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon release of this Public Notice. By this approval, the parties are authorized to consummate the transaction described in their Application. Pursuant to sections 1.106 and 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, petitions for reconsideration and applications for review may be filed within 30 days of the release of this Public Notice.

For further information, please contact Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0809.

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²⁴ *Id.* at 5.

²⁵ See, e.g., *Applications of Charter Communications, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum, Opinion and Order, FCC 16-59, para. 319 (May 10, 2016); *Sprint/SOFTBANK Order*, 28 FCC Rcd at 9682, para. 102.

²⁶ See 47 U.S.C. § 214(a).